IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **ELECTION PETITION No. 21 OF 2002**

DATE OF DECISION: November 22, 2006

MRS. SURINDER KAUR ...PETITIONER

VERSUS

BALVIR SINGH AND OTHERS ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.**

PRESENT: MS. ANU CHATRATH, ADVOCATE, FOR THE PETITIONER.
MR. SUKHBIR SINGH, ADVOCATE, FOR RESPONDENT NO.1.

**ASHUTOSH MOHUNTA, J.**

This is a petition under Sections 80 and 81 read with Section 100 of the Representation of People Act, 1951 (for short 'the Act') praying for setting aside the election of respondent No.1 Balvir Singh from 84-Bhadaur (S.C.) Assembly Constituency held on 13.2.2002 under Section 98 of the Act.

On the recommendation of the Election Commissioner of India, the Governor of Punjab issued notification under Section 15 of the Act, which was published in the official gazette on 7.1.2002 calling upon all the Assembly Constituencies in the State of Punjab to elect the members in accordance with the provisions of the Act. The last date for filing the nomination papers was 23.1.2002. The date for scrutiny of the nomination papers was 24.1.2002. The last date for withdrawal of the nomination papers was 28.1.2002. The date for polling of the votes was 13.2.2002 during 8 a.m. to 5 p.m. The date on which counting of the votes was to be done was fixed as 24.2.2002 and the process of election was to be completed on 28.2.2002.

Balvir Singh (respondent No.1) as well as the petitioner Smt.Surinder Kaur along with some other candidates contested the election from 84-Bhadaur Assembly (Reserved) Constituency, by filing their nomination papers claiming themselves to be the members of Scheduled Castes. Respondent No.1 claimed himself to be a voter in village & Post Office Ghunas, Thesil Barnala, District Sangrur and son of Nahar Singh alias Ghula Singh. On the application as well as the affidavit submitted by him, the S.D.M., Barnala, issued Balvir Singh (respondent No.1) a certificate dated 10.1.2002 to the effect that he belonged to Ramdasia Sikh Caste which had been recognized as a Scheduled Caste by the Government of Punjab. The petitioner contested as a candidate of the Congress Party, whereas respondent No.1 Balvir Singh contested the election being a candidate of Shromani Akali Dal. Balvir Singh was polled 43558 votes whereas his nearest rival Smt.Surinder Kaur petitioner was polled 20471 votes. Consequently, Balvir Singh (respondent No.1) was declared elected. The petitioner and all other candidates lost in the poll fray.

The petitioner has filed the present petition wherein challenge has been made to the election of respondent No.1 on the ground of fraud as well as adoption of corrupt practices by him. It has been alleged in the petition that the petitioner was not eligible to contest the election for the Legislative Assembly seat from the reserved constituency under the provisions of Section 5 of the Act and his nomination paper was wrongly accepted. The claim of the petitioner is that respondent No.1 proclaimed himself to be son of Nahar Singh alias Ghulla Singh. There is one Nahar Singh in the native village of respondent No.1, who does not subscribe himself as Ghulla Singh; nor does he belong to a Scheduled Caste

community as he is Jat Sikh by caste which is not a Scheduled Caste community. There is one Ghulla Singh in the village, who does not subscribe himself as Nahar Singh. Thus, it has been contended on behalf of the petitioner that respondent No.1 had fraudulently put alias Ghulla Singh after the name of his father Nahar Singh in order to make himself eligible to contest the election from the reserved constituency. In order to buttress his case, it has been contended by the petitioner that respondent No.1 had contested the Legislative Assembly elections in the year 1997 from the same constituency and claimed himself to be a son of Sant Nahar Singh, resident of village Ghunas, Tehsil Barnala, District Sangrur, and also a member of the Ramdasia community which has been declared as a Scheduled Caste. Further it has been contended on behalf of the petitioner that when the election of Balvir Singh (respondent No.1) to the Legislative Assembly was challenged vide Election Petition No.17 of 1997, then he claimed himself to be the son of Ghulla Singh alias Nahar Singh. With these allegations it has been contended on behalf of the petitioner that respondent No.1 Balvir Singh has been changing his paternity from time to time. It has been contended on behalf of the petitioner that the election of respondent Balvir Singh is vitiated and deserves to be set aside as he was not eligible to contest the election for the Legislative Assembly from the reserved constituency as per the provisions of Section 5 of the Act and his nomination paper had wrongly been accepted at the time of elections.

Another objection raised by the petitioner is that during the elections, respondent No.1 had indulged in mal practices and activities which have been held to be corrupt practices covered under the provisions of Section 123 of the Act.

The contentions raised in the petition have vehemently been controverted by respondent No.1 in the written statement filed on his behalf. The respondent has also raised certain preliminary objections to the effect that the petition is hit by the doctrine of res judicata as the controversy raised herein with regard to his being a member of Scheduled Caste community has already been decided in Election Petition No.17 of 1997 and also that the petitioner has not disclosed the material facts with regard to corrupt practices allegedly committed by him (respondent No.1) and mere vague statements with regard thereto have been made in the petition. On this basis it has been pleaded in the written statement that the relevant paragraphs in the petition deserves to be deleted. After the deletion of these paragraphs no cause of action is left in the petition and the same is liable to be dismissed under Order VII Rule 11, C.P.C.

In order to controvert averments made in the written statement, the petitioner has filed replication wherein the facts mentioned in the petition have been reiterated.

The petition was listed for deciding the following preliminary issues:-

1. Whether paragraphs 7 to 19, 31, 34, 35(i), 35(iii), 36 and 37 of the petition do not disclose any cause of action being already adjudicated and decided by this Court in Election Petition No.17 of 1997 in view of Preliminary Issue No.1? OPR.

2. Whether paragraph Nos.21 to 26, 29, 30, 30(i), 30(ii), 32, 33, 35(iv) of the petition are vague and deficient in

material facts and are not in consonance with the provisions of Section 83(1)(b) of the Representation of People Act, 1951, and are liable to be struck off from the pleadings under Order 6 Rule 16, C.P.C.? OPR.

3. Whether the preparation and finality of electoral roll can be challenged in an Election Petition and as such paragraph 29 does not disclose any cause of action? .. .. .. .. .. … … OPR.

With regard to the afore-quoted preliminary issue No.1 it has been contended by the learned counsel for the petitioner that the judgment dated 27.4.1999 delivered by this Court in E.P.No.17 of 1997 cannot stand as res judicata in the way of the petitioner so as to debar him from challenging the election of respondent No.1 on the same cause of action. It has been contended by the learned counsel that the judgment in E.P.No.17 of 1997 cannot be considered as a judgment in rem. In support of her contention, the counsel has placed reliance on a Supreme Court authority reported as ***Satrucharla Vijaya Rama Raju*** **v.** ***Nimmaka Jaya Raju and others***, (2006) 1 Supreme Court Cases 212, wherein it has been held that a judgment on an election petition is not a judgment in rem. It is merely an adjudication of a statutory challenge on the question whether election of successful candidate is liable to be voided on any of the grounds available under Section 100 of the Act.

Learned counsel appearing on behalf of respondent No.1 has contended that the whole petition is devoid of material facts which is a

mandatory requirement for making an election petition triable. It has been contended that the petitioner has not mentioned a single additional fact which has not been considered by this Court in E.P.No.17 of 1997 decided on 27.4.1997. Mr.Sukhbir Singh contends that in E.P.No.17 of 1997 a categoric finding has been given that respondent Balvir Singh belongs to Scheduled Caste. On this ground the contention of learned counsel for respondent No.1 is that the judgment of Hon'ble the Supreme Court in ***Satrucharla Vijaya Rama Raju's case*** (supra) is not applicable in the present case.

I have heard the learned counsel for the parties and examined the whole case file meticulously.

So far as issue No.1 is concerned, in paragraphs 7 to 19, 31, 34, 35(i), 35(ii), 36 and 37 the petitioner has challenged the election of the petitioner on the ground that respondent No.1 does not belong to Scheduled Caste and thus he was not eligible to contest the election from 84-Bhadaur Assembly Constituency as it was a reserved constituency and only the Scheduled Caste candidates were eligible to contest the election therefrom. Though the issue with regard to the eligibility of respondent No.1 being a Scheduled Caste had already been decided in the earlier Election Petition No.17 of 1997 by this Court, yet the contention of the learned counsel for the petitioner is that the findings given by this Court in the said petition were not binding upon the petitioner and could not debar her from challenging the election of the respondent in view of the judgment of Hon'ble the Supreme Court in ***Shatrucharla Vijaya Rama Raju's case*** (supra)**.** No doubt the judgment of this Court in E.P.No.17 of 1997 cannot operate as res judicata, nonetheless the petitioner is required to challenge the

election of respondent No.1 by bringing out all the material facts involved in the case. The primary grouse of the petitioner in all these paragraphs of the election petition is that Balvir Singh respondent had fraudulently claimed himself a Scheduled Caste candidate being the son of Ghulla Singh alias Nahar Singh or Nahar Singh alias Ghulla Singh while contesting the elections held in the years 1997 and 2002. As a matter of fact, according to the petitioner, Balvir Singh respondent is not the son of Ghulla Singh, who is Ramdasia by caste, which is a scheduled caste. His contention is that there is one Ghulla Singh in village Ghunas, who does not put alias Nahar Singh and there is one Nahar Singh in the village, who does not put alias Ghulla Singh with his name. There is only one Nahar Singh in the village, who is Jat by caste, which is a not a Scheduled Caste. On this basis the contention raised by the petitioner is that respondent Balvir Singh had fraudulently claimed himself the son of Nahar Singh alias Ghulla Singh or Ghulla Singh alias Nahar Singh in order to contest election to the Reseved Assembly Constituency of Bhadaur and his nomination papers had wrongly been accepted by the authorities concerned. In support of his contention, the petitioner has placed reliance on the application and the affidavit dated 16.1.1997 submitted by respondent Balbir Singh wherein he declared himself as Ramdasia Sikh and mentioned his father's name as Sant Nahar Singh. In the voters list for the year 1997 (Annexure P2) he has also been mentioned as son of Nahar Singh. He was issued the Scheduled Caste Certificate with the same parentage by the Sub Divisional Magistrate. When the election of respondent Balvir Singh was challenged in the earlier Election Petition No.17 of 1997, he claimed himself as the son of Ghula Singh alias Nahar Singh. Thereafter, Balvir Singh maneuvered to change

the Voter List published in January 2002 wherein he has been mentioned as son of Nahar Singh alias Ghula Singh. This is all what has been mentioned in the whole petition to contend that respondent Balvir Singh does not belong to Scheduled Caste as he had mentioned different names of his father at different times. No details with regard to the parentage and caste of respondent Balvir Singh have been given by the petitioner in the whole petition. She has not stated as to whose son the respondent is. No independent documentary proof with regard to the parentage of the respondent has been annexed with the petition. At least it was required from the petitioner to say that Balvir Singh respondent is the son of so and so person. The petitioner has to stand on her own legs in order to challenge the election of the respondent by supporting the election petition with all the material facts. Not only this, in Election Petition No.17 of 1997 Balvir Singh respondent had adduced evidence by getting examined his father Ghulla Singh alias Nahar Singh as R.W.18, and his teacher in the school, namely Bir Singh, as R.W.20. The findings of Hon'ble Mr.Justice V.S.Aggarwal in this regard are reproduced hereunder:-

> *"The most important evidence in this regard is of Ghula Singh alias Nahar singh, RW 18, real father of the respondent. He stated that he hails from village Jharon. He had five children. Respondent Balvir Singh is one of his sons. He is Ramdasia by caste. He added that he was known as Ghula Singh but after being baptized his name was changed to Nahar Singh. The respondent had studied uptill class IV. Thereafter he started learning Kirtan etc. There was no suggestion given to the witness*

*that, in fact, he is not the father of the respondent and that he is not Ramdasia by caste. It makes one conclude that respondent is Ramdasia by caste because the testimony of his father as such had not been shaken.*

*Another important evidence in this regard is the statement of Bir Singh, RW20. He is a retired teacher. Earlier, as per his statement, from 1965 to 1982 he was teacher in village Jharon. Respondent Balvir Singh s/o Ghula Singh alias Nahar Singh was his student. Entry RW 12/B is in his hand. The old teacher thus made a statement recognizing the respondent as his student. It cannot be ignored unless shown to be false. In the present case, it has not been shown to be false."*

The petitioner has not mentioned a word about the afore-mentioned unflinching evidence in the shape of the father and the old school teacher as well as the entry "RW12/B" in Election Petition No.17 of 1997 by stating that respondent Balvir Singh had fraudulently got examined wrong persons in the Court or by annexing some other supportive evidence to prove that the above-quoted findings of the Hon'ble Judge in Election Petition No.17 of 1997 were wrong. In ***Ajay Kumar Poeia*** **v.** ***Shyam and others*****, 2004(1) RCR (Civil) 327,** it has been held by their Lordships of the Supreme Court that the allegations not supported by material facts in the election petition are liable to be struck off. Similarly, in ***Jaipal Singh*** **v.** ***Smt. Sumitra Mahajan and another*****, 2004(2) RCR (Civil) 562,** the dictum of their Lordships of the Supreme Court is that any plaint or election petition is

liable to be rejected if it does not disclose the material facts constituting the cause of action. In view of the dictum of their Lordships of the Supreme Court in the aforesaid judgments, paragraphs 7 to 19, 31, 34, 35(i), 35(iii), 36 and 37 of the petition are deleted from the election petition as these are devoid of all the material facts which are necessary for challenging the election of respondent No.1.

Paragraph Nos.21 to 26, 29, 30, 30, 30(i), 30(ii), 32, 33, 35(iv) of the petition, forming part of preliminary issue No.2, relate to the corrupt practices allegedly committed by respondent Balvir Singh or his agents. In Para 21 it has been stated by the petitioner that Balvir Singh respondent himself and his supporters/agents had delivered speeches at places promoting feeling of enmity and hatred between different classes of citizens. There is no mention as to who were the supporters or agents of respondent No.1 and when he had given his consent to them to deliver objectionable speeches. Time and date of delivery of the objectionable speeches have also not been mentioned in this para. Similarly in para 22 it is mentioned that "***it is also a matter of record*** *that Respondent No.1 Balvir Singh delivered speech in a Dharamshala in village Bhadaur on 7.2.2002 declaring that anybody voting for the Congress should be socially boycotted and such Sikhs should not be allowed to enter the village Gurudwara and others for having supported congress candidate. He also appealed to the Sikhs in the name of religion to vote for him being a true Sikh.*" Which record? There is no mention about it. At what time the speech was delivered by the respondent? There is no mention about it also. In para 23 the allegation is that the respondent had distributed money among voters for their promises to vote, directly as well as through his agents. When the money was

distributed? Whom the money was given to? Through whom the money was distributed? Such details are missing. Thus, the allegation is totally vague. In para 24 the allegation is that the respondent had hired rickshaws and Rehras fitted with loudspeakers and had delivered objectionable speeches arousing the religious sentiments of the Sikh community. The allegation leveled in this paragraph is also vague as there is no mention with regard to date and time therein. Similarly, paragraph 25 is totally vague as it has been stated therein that the respondent had paid cash at various places. In paragraph 26 the allegation is that the respondent had hired transport and used the same for carrying the voters to the polling station and back. Another allegation leveled therein is that he had filed wrong expenditure statement as the respondent had not mentioned therein the expenditure incurred on leaflets and the posters pasted on the walls. How much expenditure was incurred on leaflets and posters and how much expenditure was shown in the expenditure statement filed by the respondent? There is no mention about that. Thus, the allegation leveled in this para is also vague as details about the materials facts are missing therein. In paragraph 30, 30 (i) and 30(ii), the allegations are that the Shiromani Akali Dal had issued advertisements in the newspapers, posters, displayed photos of those killed in November 1984 riots whereby the religious sentiments of the Sikh community were aroused against the Congress Party candidate and also that respondent Balvir Singh had spent huge money in cash to win support of voters. The allegations are totally general and vague in nature. The details about the printing of posters and distribution thereof, naming the persons specifically who had received the money, are missing. In the same way vague and general allegation against respondent No.1 has been leveled in

paragraph 32. The allegations leveled in paragraph 35(iv) are also vague wherein it has only been stated that respondent No.1 is guilty of corrupt practices. In the case reported as ***Laxmi Narayn Nayak*** **v.** ***Ramratan Chaturvedi and ors.*****, 1990(2) SCC 173,** the Hon'ble Supreme Court after dealing with a catena of authorities formulated essential tests with respect to the nature of pleadings and held as under:-

> *(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law.*
>
> *(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete the pleadings which are suffering from such vices as not raising any triable issue.*

Similarly, in the case reported as ***Rahim Khan*** **v.** ***Khurshid Ahmed and others*****, AIR 1975 SC 290,** it has been held by their Lordships of the Supreme Court as under:-

> *"However, we have to remember another factor. An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence,*

*thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election, which has been concluded."*

In ***Kamalnath*** **v.** ***Sudesh Verma*****, JT 2002(1) SC 15,** it has been held by their Lordships of the Supreme Court that to plead corrupt practice as contemplated by law, it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected and it cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Similarly, in ***Daulat Ram Chauhan*** **v.** ***Anand Sharma*****, AIR 1984 Supreme Court 621,** the Hon'ble Supreme Court has held that the allegation of corrupt practice must be so clear and specific that the inference of corrupt practice will resistibly admit of no

doubt or qualm. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. As a logical consequence it follows that where the allegation of fraudulent practice is open to two equal possible inferences, the pleadings of corrupt practice must fail.

In view of the above, I am of the considered opinion that the allegations contained in Paragraphs 21 to 26, 29, 30, 32, 33 and 35(iv) are vague, general in nature and, thus, are struck off.

So far as the third preliminary issue relating to the commission of irregularities in the preparation of electoral roll is concerned, it is well settled that the same cannot be challenged in the election petition. The electoral roll is prepared under Representation of People Act, 1950 and the Electoral Registration Rules, 1960. The Election Petition can be filed under Section 100 of the Representation of People Act, 1951. It is not the case of the petitioner that the electoral rolls were changed after the last date fixed for filing of the nomination papers. No details of the voters, whose names were deleted or added have been given. In view of this, the allegations contained in paragraph 29 of the petition are also held to be vague and general in nature. Consequently, this para is also struck off from the election petition.

After deletion of all the afore-mentioned paragraphs from the election petition, no substantial issue is left for adjudication.

Consequently, the petition is dismissed being without any merit.

There shall be no order as to costs.

November 22, 2007 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**